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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

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O.A.No.1456/95. Dt. of decision : -03-98.

Smt. A.Prameela .. Applicant.

Vs

1. The Nuclear Fuel Complex,
Dept. of Automic Energy,
Govt. of India,
Hyderabad-500 762, rep.
by its Managing Director.

2. The Administrative Officer,
Nuclear Fuel Complex,
Dept. of Automic Energy,
Govt. of India,
Hyderabad-500 062. .. Respondents.

Counsel for the applicant : Mr.G.Ramachandra Rao

Counsel for the respondents : Mr.N.R.Devaraj, Sr.CGSC.

CORAM:-

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

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ORDER

Heard Mr.G.Ramachandra Rao, learned counsel for the applicant and Mr.N.R.Devaraj, learned counsel for the respondents.

2. The applicant in this OA was appointed as Helper/A (Cosmetics) w.e.f., 2-9-92 on compassionate ground vice her husband Shri A.Sreeramulu, who was medically invalidated on 4-2-91. The order of appointment was issued vide letter No.NFC/PAR/03/018/782 dated 19-08-92 (Annexure-I to the OA) and she joined on probation for a period of one year w.e.f., 2-9-92.

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During the period of probation, it was observed that her performance and attitude to work was not found to be satisfactory. Her shortcomings were communicated to her vide letter No.NFC/PA.IV/Admn./5226/93 dt.13-3-93 (Annexure R-I to the reply) and vide letter No.NFC/PA.IV/5226/Admn/93 dt. 29-4-93 (Annexure R-2 to the reply). She was also warned vide letter No.NFC/PA.IV/5226/93 dt. 30-4-93 (Annexure R-3 to the reply) that refusal by her for doing any legitimate duties allotted to her by superiors will make her liable for action as deemed fit. She was also informed that she was still on probation, her continuation in service will depend on her work and conduct. The first spell of service was terminated by order No.NFC/PA.IV/5226/ dt. 10-8-93 (Annexure-III to the OA) (Page 14) as her work during the probation period was not found satisfactory.

3. Thereafter she filed representation dated 3-8-93 (Annexure R-4 to the reply) requesting the respondents to restore her services on humanitarian grounds keeping in view her family condition and other points mentioned in her representation. The respondents submit that in view of her mercy petition she was selected and posted as Mali 'A' on adhoc basis vide memorandum No.NFC/PAR/03/018/1600 dt. 10-09-93 (Annexure R-5 to the reply). The relevant para of terms and conditions are reproduced below:-

> "Your employment is temporary on adhoc basis but likely to be regularised depending upon your suitability. Further, you will be on probation for one year which may be extended at the discretion of the competent authority. During the period of your adhoc service/probation, your services are liable to be terminated at any time without assigning any reasons and without any notice. On satisfactory completion of the probationary period, you will be entitled to one month's notice of termination or one month's wages in lieu thereof. No notice could be insisted upon in the event of your resigning the employment in Nuclear Fuel Complex during the period of probation. But on completion of probation, you will be required to give one month's notice for resignation."

In order to give her a change of work and superiors she was posted to Canteen as requested by her even though she was

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appointed on adhoc basis as Mali/A. During the period of her second appointment she was given certain adverse assessment reports which were communicated to her vide letter No.NFC/PA.IV/P&G/5226/94 dated 22-1-94 (Annexure R-6), vide letter No.NFC/PA.IV/5226/P&G/94 dt. 13-4-94 (Annexure R-7) and Letter No.NFC/PA.IV/P&G/5226/94 Dt. 10-09-94 (Annexure R-8). As her work was not found satisfactory during the probation period the probation was extended by six more months from 15-9-94 to 14-3-95 vide order No.NFC/PA.IV/P&G/5226/94 dt. 13-9-94 (Annexure R-9). That was received by her on 13-9-94 (Annexure R-10). Even thereafter her work was not found to be satisfactory which was communicated to her vide letter no.NFC/PA.IV/P&G/5226/94 dt. 21-12-94 (Annexure R-11). By letter No.NFC/PA.X/5226/95/376 dt. 2-3-95 (Annexure-VI to the OA) her explanation was sought for as to why action should not be taken against her for refusing to attend to work in the first shift w.e.f., 1-3-95 and she was further advised in that letter to attend duty as per shift schedule w.e.f., 3-3-95 without fail. She was also informed by letter No.NFC/PA.X/5226/95 dt. 6-3-95 (Annexure-VII to the OA) that her request for alloting duties in general shift was not possible and she was informed that she should make efforts to attend to first shift duties only. She did not attend the first shift duty during the period from 1-3-95 to 6-3-95 and was treated as unauthorised absence and she was also cautioned that action as deemed fit would be initiated against her for unauthorised absence vide letter No.NFC/PA.X/5226/78 dated 6-3-95 (Annexure-VIII to the OA). On 10-03-95 her services were terminated with immediate effect as her work during the extended probationary period was not found to be satisfactory vide order No.NFC/PA.IV/5226/95/412 dated 10-03-95 (Annexure-IX to the OA).

4. This OA is filed for setting aside the impugned order No.NFC/PA.IV/5226/95/412 dt. 10-3-95 (Annexure-IX to the OA) whereby her services were terminated and for a consequential direction to the respondents to reinstate her in service with all attendant benefits including continuity of service and back wages as otherwise the applicant will put to great hardship and loss.

5. The main contention of the applicant in this OA for seeking the above relief is that the impugned order dated 10-03-95 is a punishment order as by 10-3-95 she has not completed her probation. She completes the probation only on 14-3-95. The termination order before the completion of the probation period can be effected only by giving her notice and on that basis terminate her service or she can be given a month's pay and terminate under Rule 5(1) of the Temporary Service Rules. The learned counsel for the applicant submits that if she has been terminated on completion of her extended probation period for six months on 14-3-95 then only it may not be treated as punishment. It is further contended that since she was not attending the first shift duties her services were terminated for the alleged misconduct of not attending the first shift duties. It is evident from the fact that she was informed by letter dated 6-3-95 that she will be treated as unauthorised absence from 1-3-95 to 6-3-95 as she had not attended the first shift duty during that period and immediately thereafter the impugned order dated 10-3-95 was issued. Hence the learned counsel for the applicant contends that the impugned order is nothing but punishment and hence the rules in this connection are not followed for terminating her services.

6. For the above contention the applicant relies on the judgement of the i) Supreme Court reported in AIR 1964 SC 806 (The Management of the Express News papers (P) Ltd. Madurai Vs. The Presiding Officer, Labour Court, Madurai. and Another)

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ii) 1996 (1) SLR 559 (The Haryana State Co-op. Apex Bank Ltd. Vs. Sat Narain) and iii) 1995 (1) SLR 706 (Syed Azam Hussaini Vs. The Andhra Bank Ltd.).

7. The respondents state that the period of probation unless it is terminated or she is confirmed she has to be treated as an employee under ~~going~~ probation. Her probation was not terminated and she was under probation ~~was xxxxxxxxx~~ after a year for another six months. During the period of her probation as Mali/A she had been given number of letters about her shortcomings and was also advised to show improvement in her own interest. The number of letters she was given from the date of issue of the letter dated 10-9-93 till the issue of the impugned order dated 10-3-95 has already been indicated in the facts of this case. The learned counsel for the respondents also submit that she was terminated on 10-3-95 as 11-3-95, 12-3-95 and 13-3-95 happened to be holidays and she ~~has~~ was completing the probation on 14-3-95. Hence issue of that impugned termination order dated 10-3-95 cannot be treated as a punishment for her misconduct. As she had not discharged her duties properly during the extended period of probation her services were terminated in accordance with law. Further, the learned counsel for the respondents relied on the judgement of the Supreme Court reported in 1996 (1) SLR 52 (Satya Narayan Athya Vs. High Court of M.P. and another) to state that it is open to the respondents to terminate the service of the [illegible] probation.

8. From the above submission the only point to be seen in this OA is whether the impugned order issued for terminating her service is in order or not. In otherwards it has to be seen whether it is an order of punishment based on certain alleged misconduct of the applicant.

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9. In the reported case in AIR 1964 SC 806 the respondent was an employee of the Express Newspapers (P) Ltd., Madurai, whose services were terminated when he was on probation. The relevant observation of the Supreme Court in the above case is reproduced below:-

> "The main contention urged by Mr.Gupte in support of the appeal is that the High Court was wrong in law in thinking that once the period of six months expired Mr.Bobb still continued to be in service of the appellant as a probationer. According to the learned counsel there would be automatic termination of service as soon as the period of probation of six months had expired unless an order of confirmation was made. This contention is, in our opinion, wholly unsound. There can, in our opinion, be no doubt about the position in law that an employee appointed on probation for six months continues as a probationer even after the period of six months if at the end of the period his services had either not been terminated or he is confirmed. It appears clear to us that without anything more an appointment on probation for six months gives the employer no right to terminate the service of an employee before six months had expired-except on the ground of misconduct or other sufficient reasons in which case even the services of a permanent employee could be terrminated. At the end of the six months period the employer can either confirm him or terminate his service, because his service is found unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination, the employee continues to be in service as a probationer. The High Court was therefore right in rejecting the Management's contention that there was an automatic termination of Mr.Bobb's services after August 28, 1957. Mr.Gupte also tried to persuade us to examine the correctness of the High Court's view that the Labour Court's finding on the question of victimisation was not liable to interference. It appears to us clear that when the Labour Court came to the conclusion on a consideration of the evidence that the Management's action was not bona fide but amounted to victimisation of the employee it would not have been open to the High Court to disturb that finding except on the ground of an error apparent on the face of the record or on the ground that there was no evidence at all to support it. The High Court has not only found no such error but has gone further and indicated its support of that finding. It is not open to the Management to challenge the High Court's conclusion on this point."

10. It is seen from the cause title of that case that it is an Industrial dispute case whereas the present case is not filed due to an industrial dispute. The present case is arising out of the alleged misconduct of the employee during the probation period. So, we are not sure whether the above citation is directly applicable in the present case. However the crucial portion extracted above reads as follows:-

> "It appears clear to us that without anything more an appointment on probation for six months gives the employer no right to terminate the service of an employee before six months had expired-except on the ground of misconduct or other sufficient reasons in which case even the services of a permanent employee could be terminated."

From the above it appears that without anything more an appointment on probation for six months gives the employer no right to terminate the service of an employee before six months had expired. It clearly states that the above rule is not applicable if the termination is taken place on the ground of misconduct or other sufficient reasons in which case even the services of a permanent employee could be terminated. It does not state that in that case disciplinary proceedings has to be initiated, ~~under~~ under the above circumstances the terms and conditions of appointment will play an important role.

11. From the above it appears that the services of an employee on probation can be terminated on the ground of misconduct or other sufficient reasons. It does not show that under such circumstances the termination is to be effected only after the issuing a show cause notice atleast. Hence it has to be held that the services of an employee who is on probation can be terminated for misconduct for other sufficient reasons on the basis of terms and conditions of appointment to the service.

12. In the present case the applicant was posted initially vide order dated 19-8-92 and she was discharged from service for her unsatisfactory work. The unsatisfactory service was communicated to her vide letters dated 13-3-93, 29-4-93 and 30-4-93 before termination of her initial services by order dated 10-8-93. Since she submitted a representation dated 3-8-93 it appears her case was considered on humanitarian grounds and she was posted as Mail/A giving her duties elsewhere on the basis of the fresh order dated 10-9-93. Even during the period she was posted on the second occasion her work was found to be very

unsatisfactory as can be seen from the letters given to her dated 22-1-94, 13-4-94 and 10-9-94 and her probation was extended by six more months from 15-9-94 to 14-3-95 by order dated 13-9-94. Even after her probation was extended she failed to discharge her duties efficiently which was informed to her by letter dated 21-12-94. No employee can refuse to work on the alloted duty hours and there was no reasons to refuse to work during that duty hours. If alteration to duty roster is necessary then an employee has to get the necessary permission from the employer. In the present case when she refused to work on the first shift from 1-3-95 she was informed on the basis of her representation that she cannot escape from working in the first shift as other lady employees were working in that shift and she cannot be posted in the general shift. Inspite of that, she did not attend the duties in first shift.

13. Considering [illegible]

the impugned letter dated 10-3-95. In view of that it has to be held that the applicant was terminated for other sufficient reasons and hence such a termination cannot be questined as stated above following the Express News papers (P) Ltd case reported in AIR 1964 SC 806.

14. Even otherwise it appears from the reported case of Express News papers that the termination even before the completion of the probation period can be done if so indicated in the appointment order. In the appointment order given to her while posting her Mali/A dated 10-9-93, the relevant para has been extracted above. It has been stated in that relevant para that "during the period of her adhoc service/probation her services are liable to be terminated at any time without assigning any reasons and without any notice." Thus, she has been cautioned even while appointing her that even though she is under going probation she can be terminated even without notice at any time without assigning any reasons." In the present case

she has been informed of her shortcomings repeatedly a number of times as extracted above. Further she has no reason to refuse to work in the first shift when her services were required in the first shift and not in the general shift. Hence, her services were terminated in accordance with the terms and conditions given in her appointment order dated 10-9-93. Hence from the foregoing it should be held that she has been terminated from service for valid reasons and even if it is considered that she was terminated during the probation period it has been done for sufficient reasons in accordance with the terms and conditions of her appointment and after cautioning her of shortcomings. In our opinion it is also to be noted that there is no violation of the principles laid down by the Apex Court in the Express Newspaper's case.

15. In Syed Azam Hussaini's case and Sat Narain's case there are no indication about the terms and conditions incorporated in the appointment order. Hence, we are not able to come to the conclusion decisively in regard to the termination of the employees in those two cases. It has to be noted that in Syed Azam Hyssaini's case it has arisen due to industrial dispute and in the case of Sat Narain the appeal was only partly allowed to the extent that it will be open to the appellant, if so advised, to give an opportunity to show cause to the respondent, consider his objection and pass appropriate orders. Thus even Sat Narain's case there is no full and definite direction of allowing of that case.

16. In the reported case reported in AIR 1980 SC 1242 (Oil and Natural Gas Commission Vs. Dr.Md.S.Iskander Ali) the employer has got powers to terminate the service of the employee under the terms of appointment of the employee. Such a power flowed from [illegible] service could not be treated as penalty of punishment.

17. This para is extracted below:-

> "If the appointing authority considered it expedient to terminate the services of the probationer it could not be said that the order of termination attracted the provisions of Article 311, when the appointing authority had the right to terminate the service without assigning any reasons. In such a case even if misconduct, negligence, inefficiency might be the motive or the inducing factor which influenced the employer to terminate the services of the employee a power which the employer undoubtedly possessed, even so as under the terms of appointment of the employee such a power flowed from the contract of service, termination of service could not be termed as penalty of punishment."

18. The learned counsel for the respondents relied on the judgement of the Supreme Court reported in 1996 (1) SLR 52 (Satya Narayan Athya Vs. High Court of M.P. and Another) to state that to discharge an employee from service who is on probation it is not necessary that there should be a charge and enquiry on his conduct. The relevant portion of the above quoted judgement is reproduced below:-

> "Under these circumstances, the High Court was justified in discharging the petitioner from service during [illegible] of his probation. It is not necessary that there petitioner is only on probation and during the period of probation, it would be open to the High Court to consider whether he is suitable for confirmation or should be discharged from service."

19. The applicant was discharged from service on 10-3-95 and his extended period of probation ended on 14-3-95. 11-3-95, 12-3-95 and 13-3-95 happened to be holidays. Hence the issue of the termination order dated [illegible]

the intervening holidays may not be treated as irregular as the applicant was given termination order only at the fag end of his extended probation and that was issued because of the intervening holidays. The maximum applicant can demand is the salary for 4 days [illegible]

serious irregularity has been committed in discharging the applicant from service on 10-3-95 when she completed her probation on 14-3-95.

20. In view of the foregoing, we hold that the contentions of the applicant cannot be sustained. Hence, the OA is liable only to be dismissed and accordingly it is dismissed. No costs.

(B.S.JAI PARAMESHWAR)
MEMBER(JUDL.)

(R. RANGARAJAN)
MEMBER(ADMN.)

30/3/98

Dated : The 30th March, 1998.

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OA.1456/95

Copy to:-

1. The Managing Director, Nuclear Fuel Complex, Dept. of Automic Energy, Hyderabad.
2. The Administrative Officer, Nuclear Fuel Complex, Dept. of Automic Energy, Hyderabad.
3. One copy to Mr. G.Ramachandra Rao, Advocate, CAT., Hyd.
4. One copy to Mr. N.R.Devaraj, Sr.CGSC., CAT., Hyd.
5. One copy to D.R.(A), CAT., Hyd.
6. One duplicate.

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15/4/98 (6)

II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR :
M (J)

DATED: 30/3/98

~~ORDER~~/JUDGMENT

~~M.A/R.A/C.P.NO.~~

in

O.A.NO. 1456/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR